

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JO A CURRENT
Claimant

APPEAL NO. 10A-UI-05386-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 03/14/10
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

CDS Global Inc. filed a timely appeal from a representative's decision dated April 2, 2010, reference 01, which allowed benefits based upon the claimant's separation from CDS Global Inc. After due notice, a telephone hearing was held on May 25, 2010. Although duly notified the claimant did not respond to the notice of hearing and did not participate. The employer participated by Courtney Vilhaugr, Workforce Manager and Amie Crawford, Insert Manage.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jo Current was employed by CDS Global Inc. from May 1, 2006 until March 11, 2010 when she was discharged from employment. The claimant held the position of full-time lead in the company's insert department working the second shift. Her immediate supervisor was Amie Crawford, Department Manager.

The claimant was discharged after it was determined that Ms. Current had instructed a machine operator to proceed with a production run that included the wrong inserts. The production worker had noted the error and had brought the matter to the attention of Ms. Current. The claimant did not check available lists to determine whether the worker was correct and the insert should not have been included. Ms. Current instead instructed the operator to proceed without determining whether the instruction was correct. The claimant's error cost the company considerable time and effort to reinsert each envelope by hand.

The claimant had demonstrated the ability to perform duties of this nature in the past and the information necessary to make a correct decision was readily at hand. Ms. Current had been warned in the past for failing to follow work instructions.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The evidence in the record establishes that the claimant had the ability to perform the duties incident to her job and a checklist to confirm the correctness of the insert was readily available to the claimant. Although the information necessary to perform her duties was readily available, Ms. Current did not avail herself of the information. When the insert operator questioned the instructions the claimant instructed the operator to proceed rather than checking available information to make a correct business decision.

As the claimant had been warned in the past she was aware that failure to follow the correct procedures could result in increasing disciplinary action up to and including termination. The claimant's failure to follow reasonable steps that were available to ensure the proper inserts were included in the mailing showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Law. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated April 2, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing that she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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